IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9240 OF 2007

Rajendra Laxman Sonawane .. Petitioner
Versus
Dhanraj Sahdev Sharma & Ors. .. Respondents

Mr.V.Y.Jadhav for petitioner
Ms.V.Mhaispurkar for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 19th December 2007
P.C.

. The order on application which was preferred by the petitioner for recalling the order of "No W.S" and permitting them to file written statement, is questioned under Article 227 of Constitution of India. It is admitted that Special Civil Suit No.14 of 2006 is pending. Recording of evidence as not yet commenced. Defendants applied for time to file written statement which application was rejected on 5th October 2006. It is further clear that the

petitioner filed another application (Exh.31) and applied for condonation of delay. That application was rejected so also the request therein to recall the order of no written statement.

2. Learned Judge has observed that the ground put forward that the petitioners defendants were contesting the elections is not sufficient and does not come within the exceptional circumstances. Yet, the learned Judge observed that no details of the election process of the Municipal Council are stated.

3. The order was passed on 16th March 2007. There is affidavit in reply filed and along with the same, the records of the suit are also filed. There is rejoinder affidavit in which the election programme and other details are annexed.

4. In my view, considering the peculiar

facts of this case and merely because details pertaining to the election were not set out, the petitioner could not be non-suited. This is a suit of 2006. No W.S. order was passed on 19th October 2006. Application to recall the said order was made on 5th February 2007. In such circumstances, learned Judge could have imposed cost and further conditions and granted request therein.

5. Applying principles laid down by the Supreme Court and this Court so also taking into account that the provisions are directory, in the peculiar facts of this case, the petitioners are granted 10 days time to file written statement and the same would be taken on file provided they pay cost to the respondents original plaintiffs in the trial court quantified at Rs.5000/-. Costs condition precedent. Petition disposed of. All concerned to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J)